IP 02-0163-C K/T Cardinal Contracting v FMC Co.
Judge Tim A. Baker Signed on 7/26/02

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CARDINAL CONTRACTING CORPORATION, Plaintiff, vs. FMC TECHNOLOGIES INC F/K/A FMC CORPORATION, Defendant.	)	CAUSE NO. IP02-0163-C-T/K

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CARDINAL CONTRACTING CORPORATION,	)	
Plaintiff,	)	
vs.	)	CAUSE NO. IP 02-0163-C-K/T
FMC TECHNOLOGIES, INC., F/k/a FMC CORPORATION,	)	
Defendant.	)	

REPORT AND RECOMMENDATION ON DEFENDANT'S MOTION TO DISMISS

I. Background

Plaintiff Cardinal Contracting's ("Cardinal") amended complaint alleges the following facts. Defendant FMC Technologies orally contracted with Cardinal to supply millwrights from late 1997 through early 1999 to support Defendant in setting up equipment at DaimlerChrysler's Indiana Transmission Plant located in Kokomo, Indiana. [Am. Compl. ¶ 2-3]. Several of Defendant's employees "held themselves out" as having actual or apparent authority to enter into the contract with Cardinal. [Id. at ¶ 4]. After performing the duties pursuant to the contract, on January 31, 2001, Cardinal billed Defendant for its services. [Id.]. However, Defendant refused to make payment. [Id. at ¶¶ 4-5]. As a result, Cardinal claims that Defendant breached its contract with it, and that Defendant was unjustly enriched by its failure to make payment for services performed. [Id. at ¶¶ 6, 8].

Defendant moved to dismiss, claiming that Cardinal failed to state a claim upon which relief

could be granted because: (1) Cardinal's complaint does not plead facts establishing the essential elements of a contract; and (2) any oral contract it had with Cardinal is invalid because it does not comply with Indiana's statute of frauds, Ind. Code § 32-21-1-1.[1] [Def.'s Br., pp. 2-5]. For the reasons set forth below, the Magistrate Judge recommends that Defendant's motion to dismiss be DENIED.

II. Discussion

A. Motion to Dismiss Standard

The purpose of a motion to dismiss under Fed. R. Civ. P. 12(b)(6) is not to decide the merits of the challenged claims, but to test the sufficiency of the complaint. Weiler v. Household Fin. Corp., 101 F.3d 519, 524 n.1 (7th Cir. 1996). Accordingly, in ruling on a motion to dismiss, a court must assume as true all well-pleaded facts set forth in the complaint, construing the allegations liberally and drawing all inferences in the light most favorable to the plaintiff. See, e.g., Jackson v. E.J. Brach Corp., 176 F.3d 971, 977 (7th Cir. 1999) (interpreting Fed. R. Civ. P. 12(b)(6)); Zemke v. City of Chicago, 100 F.3d 511, 513 (7th Cir.1996) (same). Dismissal is appropriate only if it is impossible for the plaintiff to prevail under any set of facts that could be proven consistent with the allegations. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Forseth v. Village of Sussex, 199 F.3d 363, 368 (7th Cir. 2000). See also Veazey v. Communications & Cable of Chicago, Inc., 194 F.3d 850, 854

[1] Cardinal cites Indiana's statute of frauds as Ind. Code § 32-2-1-1, however this section number was recently amended to § 32-21-1-1 by P.L. 2-2002 § 6. The law applicable to Cardinal's claim is unchanged by the amendment, therefore the Court will refer to the statute by its amended section number.

(7th Cir. 1999) ("[I]f it is possible to hypothesize a set of facts, consistent with the complaint, that would entitle the plaintiff to relief, dismissal under Rule 12(b)(6) is inappropriate.").

B. Adequacy of Plaintiff's Amended Complaint

Defendant first argues that Cardinal "failed to plead the essential terms of an oral contract," and thus, Fed. R. Civ. P. 12(b)(6) warrants dismissal of Cardinal's claim. [Def.'s Br., pp. 2-4]. Generally, the rules governing federal pleading practice are quite liberal, requiring that a defendant be given only "fair notice of what the plaintiff's claim is and the grounds upon which it rests." Swierkiewicz v. Sorema N.A., 122 S.Ct. 992, 998 (2002), quoting Fed. R. Civ. P. 8(a)(2) (notice pleading requires only a "short plain statement of the claim showing that the pleader is entitled to relief"). Under Rule 8, the Federal Rules promote a system of simplified notice pleading, which was "adopted [in 1938] to focus litigation on the merits of a claim."[2] Id. at 999, citing Conley v. Gibson, 355 U.S. 41, 47-48 (1957). Thus, "[c]omplaints need not plead law or match facts to every element of a legal theory." Bennett v. Schmidt, 153 F.3d 516, 518-19 (7th Cir. 1998). "[C]onclusory allegations are sufficient, so long as they give notice of the claim." Quantum Color Graphics, LLC v. Fan Assoc. Event Photo, GMBH, 185 F.Supp. 2d 897, 905 (N.D. Ill. 2002). See also Ross Bros. Constr. Co., Inc. v. Int'l Steel Servs., Inc., 283 F.3d 867, 873 (7th Cir. 2002) ("As long as Rule 8 stands unaltered . . . courts must follow the norm that a complaint is sufficient if any state of the world consistent with the complaint

[2] Additional requirements of Rule 8 that are relevant to notice pleading include: "No technical forms of pleading or motions are required." Swierkiewicz, 122 S.Ct. at 998, citing Fed. R. Civ. P. 8(e)(1); "All pleadings shall be so construed as to do substantial justice." Swierkiewicz, 122 S.Ct. at 998, citing Fed. R. Civ. P. 8(f); "Each averment of a pleading shall be simple, concise, and direct." Bennett v. Schmidt, 153 F.3d 516, 518 (7th Cir. 1998), citing Fed. R. Civ. P. 8(e)(1).

could support relief."). In the context of contract formation, courts in the Seventh Circuit have interpreted Rule 8 to require a plaintiff to plead only "the bare essentials of offer, acceptance, consideration, performance by the plaintiff and breach by the defendant causing loss." Derson Group, Ltd. v. Right Mgmt. Consultants, Inc., 683 F.Supp. 1224, 1230 (N.D. Ill. 1998).

Cardinal alleges in its complaint that: (1) Defendant "orally contracted with Cardinal to supply millwrights"; (2) Cardinal provided "labor and materials" to Defendant; and (3) Defendant failed to "make complete payment of the unpaid balance" for the work performed. [Am. Compl. ¶¶ 3-4, 8]. Defendant contends that Cardinal's failure to "plead facts"[3] constitutes that it has "not been put on notice of any breach of an alleged oral contract." [Def.'s Br., pp. 3-4]. However, requiring Cardinal to plead all facts suggested by Defendant to adequately constitute notice is simply unwarranted by Rule 8, and in fact may induce Cardinal to violate Rule 8(e). See Bennett, 158 F.3d at 518 ("[A] requirement that complaints contain all of the evidence needed to prevail at trial, or at least all the facts that would have been required under the pre-1938 system of code pleading, would induce plaintiffs to violate Rule 8(e) . . . by larding their complaints with facts and legal theories."). Drawing all inferences in the light most favorable to Cardinal, it has sufficiently pleaded the bare essentials of the elements of a contract as required by Rule 8.

Defendant next argues that "federal law requires plaintiffs to either attach a copy of the contract to the complaint or set forth the terms of the contract verbatim in the complaint," and that this policy

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[3] Defendant argues that Cardinal has not pled facts showing: (1) that there was a meeting of the minds on the essential terms of the contract; (2) a date upon which an offer was made; (3) specific agents to which the offers were made; (4) terms of the offer; (5) terms of acceptance; (6) consideration; (7) that a power to create a contract was reasonably conferred; or (8) Defendant's "unequivocal manifestation" of intent to be bound. [Def.'s Br., pp. 3-4].

should extend to oral contracts. [Def.'s Br., p. 3]. On the contrary, Mount Hawley Ins. Co. v. Guardsmark, Inc., 2001 WL 766874 (N.D. Ill. 2001), which Defendant cites for this proposition, refers to this requirement as set forth by an Illinois state rule of procedure, 735 ILCS § 5/2-606. See also Ind. Trial Rule 9.2(a) ("When any pleading allowed by these rules is founded on a written instrument, the original, or a copy thereof, must be included in or filed with the pleading."). Mount Hawley held that federal law, rather than state law, governed the issue; therefore plaintiffs may, but are not required to, set forth terms of a contract in any greater detail than required by Rule 8. Id., citing 5 Wright & Miller, Federal Practice & Procedure: Civil 2d § 1235, at 272-73 (2d ed. 1990) ("In pleading the existence of an express written contract, plaintiff, *at his election, may* set it forth verbatim in the complaint, attach a copy as an exhibit, or plead it according to its legal effect.") (emphasis added). Consequently, the Court need not reach the question of whether this proposition applies to oral as well as written contracts. Cardinal, at its option, elected not to set forth the terms of the contract in the complaint and has committed no procedural violations under Rule 8 warranting dismissal for not doing so.

C. Effect of the Statute of Frauds

Defendant alternatively argues as an affirmative defense that Cardinal's complaint should be dismissed because the oral contract between the parties fails to satisfy the Indiana statute of frauds, Ind. Code § 32-21-1-1. [Def.'s Br., pp. 5-6]. "Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state." Erie R. Co. v. Tompkins, 304 U.S. 64, 78 (1938). See also Bourke v. Dun & Bradstreet Corp., 159 F.3d 1032,

1036 (7th Cir. 1998) (contract interpretation is a question of state law). Therefore, Indiana law applies. Section 32-21-1-1(b)(5) states that a person may not bring "[a]n action involving any agreement that is not to be performed within one (1) year from the making of the agreement," unless the agreement is in writing. See Jindal v. Univ. Transplant Associates, Inc., 2002 WL 1461705, at *11 (S.D. Ind. Mar. 7, 2002), citing Ind. Code § 32-2-1-1.

Cardinal alleges in its complaint that "[f]rom late 1997 through early 1999 . . . FMC employees . . . orally contracted with Cardinal to supply millwrights . . ." [Am. Compl. ¶ 3]. Because Cardinal's allegations of an oral agreement refer to dates that span greater than one year, Defendant contends that such agreement is invalidated by statute of frauds § 32-21-1-1(b)(5). In support of its contention, Defendant cites the archaic case of Meyer v. E.G. Spink Co., 127 N.E. 455 (Ind. Ct. App. 1920), for the following proposition:

> Where the manifest intent and understanding of the parties, as gathered from the words and circumstances existing at the time, are that the contract shall not be executed within the year, *the mere fact that it is possible that the thing to be done may be done within the year, will not prevent the statute from applying*.

Id. at 456 (involving an oral contract for the construction and financing of a building) (emphasis added). However, the proposition Defendant represents as controlling is not Meyer's holding, but merely a quotation from a source that the court cites as "Brown on the Statute of Frauds (5th Ed.) § 281".[4] The Meyer court's actual holding was very fact-specific; it held that "by a reasonable construction of the contract involved it [could] not be performed within the year." To arrive at this holding, the Meyer

[4] In addition to "Brown" the Meyer court cites 11 other sources of law, from both treatises and other jurisdictions, to demonstrate a sampling of interpretations of the statute of frauds provision at issue.

court stated that it is "not out of harmony with [the] decision" in Thomas v. Armstrong, 10 S.E. 6 (Va. 1889), which held that "if by the terms or by reasonable construction a contract not in writing can be fully performed within a year, although it can be done only by the occurrence of some improbable event . . . it is not within the statute [of frauds]." Throughout the past century, Indiana courts have held true to that proposition. See, e.g., Wallem v. CLS Industries, Inc., 725 N.E.2d 880, 887 (Ind. Ct. App. 2000), citing Silkey v. Investors Diversified Servs., 690 N.E.2d 329, 334 (Ind. Ct. App. 1997) ("The Statute of Frauds has always been held to apply only to contracts which, *by the express stipulations of the parties*, were not to be performed within a year, and not to those which *might or might not*, upon a contingency, be performed within a year. The one year clause of the Statute of Frauds has no application to contracts which are *capable* of being performed within one year of the making thereof.") (emphasis in original); Wright Mfg. Corp. v. Scott, 360 N.E.2d 2, 10 (Ind. Ct. App. 1977), citing Purity Maid Products Co. v. Am. Bank & Trust Co., 14 N.E.2d 755, 758 (Ind. Ct. App. 1938) ("Where no time is fixed for the performance of a contract; or where it is to be performed by a certain day (the right to perform it sooner not being precluded); or where the performance depends upon a contingency which may or may not happen within a year, the contract is not within s 1 of the statute of frauds.").

Cardinal alleges only that "[f]rom late 1997 through early 1999 . . . FMC employees . . . orally contracted with Cardinal . . ." [Am. Compl. ¶ 3]. Cardinal has not alleged that the parties stipulated that the oral contract be performed within a year. Furthermore, the allegations do not reflect whether the contract was capable of being performed within one year. The allegations also do not make it clear that the dates alleged are contract terms, but only allege that an oral contract was made "[f]rom late

1997 through early 1999." Finally, Cardinal's allegations do not specify whether there was a single or series of oral contracts between the parties. As demonstrated, it is possible to hypothesize a set of facts consistent with Cardinal's allegations that could be proven under which Cardinal could prevail. Discovery may bring out additional facts that shed light on the applicability of the statute of frauds, but dismissal at this time under Rule 12(b)(6) is inappropriate.

III. Conclusion

Cardinal has sufficiently met the notice pleading requirements of Fed. R. Civ. P. 8. Additionally, at this stage in the case Cardinal's allegations do not amount to an oral contract void under the Indiana statute of frauds. Accordingly, the Magistrate Judge recommends that Defendant's motion to dismiss be DENIED.

Any objections to the Magistrate Judge's report and recommendation shall be filed with the Clerk in accordance with 28 U.S.C. § 636(b)(1), and failure to file timely objections within ten days after service shall constitute a waiver of subsequent review absent a showing of good cause for such failure.

So ordered.

Dated this 26th day of July, 2002.

Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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